IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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D.B. CIVIL SPECIAL APPEAL NO.75/2006

Jeet Singh

Versus

Smt. Mohni Devi and ors.

Date of Order : 10.4.2006

PRESENT

HON'BLE MR.RAJESH BALIA, J.
HON'BLE MR. JUSTICE R.P. VYAS

Mr.Rajesh Panwar, for the appellant

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Heard the learned counsel for the parties.

This appeal is directed against the order of the learned Single Judge dtd.9.9.2005 in S.B. Civil Misc. Appeal No.1177/2005.

As a result of accident that took place on 20.7.2000, two persons died, namely, Kishan Lal and Mahaveer Prasad.

Two claim petitions were filed by respective legal representatives of the deceased, bearing MACT Claim No.119/2000 and 120/2000. The present appeal relates to

the claim filed by legal representatives of Kishan Lal who at the time of death was 43 years of age, whereas the deceased Mahaveer Prasad was 38 years of age.

Both the claims were decided by common order dtd.10.2.205 by the Motor Accident Claims Tribunal. The present appellant Jeet Sing is the registered owner of the vehicle. His plea before the Tribunal was that he has transferred the vehicle to 3rd party and his liability has ceased to operate in respect of claims arising out of the accident for the transferred vehicle. This plea was not sustained by the Motor Accident Claims Tribunal.

In respect of deceased Kishal Lal who was 43 years of age, the compensation for a sum of Rs.3,17,000/- was awarded and in respect of claim arising from death of Mahaveer Prasad,a sum of Rs.4,16,000/- was awarded.

The criteria adopted for determination of compensation in both the cases was same as both were labours by taking minimum wages of Rs.64/- per day prevalent at that time as basis of their income. Monthly, income was determined at Rs.2000/- i.e. to say Rs.24,000/- per annum. 1/3rd of the amount was held to be

spent on personal expenses and remainder Rs.16,000/- were estimated to be spent on family. In the case of person who was above 40 years of age, multiplier of 15 was applied, whereas in the case of persons below 40 years, multiplier of 15 was applied. Some amount was also granted in respect of future prospects. The present appellant preferred two appeals against the impugned award inter alia on the ground that he is not liable to pay compensation, but the purchaser of the vehicle is liable to pay compensation who was not impleaded as party and secondly, quantum awarded by the Tribunal is excessive.

The learned Single Judge by common detailed order passed in S.B. Civil Misc. AppealNo.1175/2005 arising from the death of Mahaveer Prasad dismissed the same by rejecting both the contentions about liability of purchaser as well as excessiveness of amount of compensation. Following decision in S.B. Civil Misc. Appeal No.1175/2005, S.B. Civil Misc. Appeal No.1177/2005 arising out of death of Kishan Lal was also dismissed.

Aggrieved with the order passed by the learned Single Judge, two separate appeals were preferred being D.B. Civil Misc. Appeal No.56/2006 and D.B. Civil Special

Appeal No.75/2006.

It is informed by the learned counsel for the appellant that so far as D.B. Civil Special Appeal No.56/2006 is concerned, the same has bene dismissed by the Division Bench in limine vide ordr dtd.16.2.2006 by making following observation:

> "Without intending to express our opinion, much less any finding whatsoever against the purchasers, wer are of the view that if the appellant is entitled to recover the amount of compensation from the purchasers, it is certainly open to him to file suit and seek the recovery in accordance with law. So far as the present dispute is concerned, we find no error in the award or order of the learned Single Judge holding the appellant liable for compensation vis-a-vis the claimants."

It appears that no contention was raised before the Division Bench in respect of quantum of compensation and if raised must be deemed to have been impliedly over-ruled.

Be that as it may, in the present appeal, the learned counsel does not make further argument on question of liability of purchaser. However, it has been tried to contend that quantum of compensation was excessive.

We are of the opinion that the contentino about excessiveness of quantum in this appeal is not sustainable because the formula applied in respect of compensation to be awarded in both the cases is same and only difference in the quantum has arisen because of age different between the two deceased. The formula applied by the Tribunal in determining the compensation being just and proper was not interfered with by the learned Single Judge and we are in agreement with the finding of learned Single Judge.

The appeal, therefore, fails and is hereby dismissed subject to above noticed observation made in the order dtd.10.2.2006 which shall apply to the present case also.

No order as to costs.

(R.P.VYAS),J. **(RAJESH BALIA)J.**

SS/-